IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

Crl.Rev.Pet.No. 29 of 1997()

CRA.153/1991 of SESSIONS COURT, MANJERI
CC.109/1991 of THE JUDICIAL FIRST CLASS MAGISTRATE COURT, PERINTHALMANNA
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REVN. PETITIONER/APPELLANT/ACCUSED:

K.S.SUNDARAN,S/O.SANKARAN,
KEERIKKAD VEEDU, CHENNANKODE, PARUTHIPULLI,
KOTTAYI, PALGHAT.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.ALAN PAPALI

RESPONDENT/COMPLAINANT:

STATE, REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KEALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.C.SANTOSH KUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY, J.

Criminal R.P.No.29 OF 1997 ()

Dated this the 29th day of October, 2007

O R D E R

Revision petitioner was found guilty for the offences punishable under section 408 and 477 (A) of the Indian Penal Code and he was sentenced to undergo rigorous imprisonment for two years for the offence punishable under Section 408 of the IPC and rigorous imprisonment for one year for the offence punishable under Section 477(A) of IPC. According to the prosecution, the accused was the Secretary of the Harijan Service Co-operative Society, Attappadi during the year 1985. While working as Secretary, the accused manipulated the records of the Society by falsifying the accounts during the period 10.5.1985, 16.5.1985, 27.5.1985, 5.6.1985, 7.6.1985, 26.6.1985 and 28.6.1985 and also he appropriated an amount of Rs.36,200/- belonging to the Society and he was converted the amount to his own use. PW6 Co-operative Inspector while conducting inspection on 13.9.1985, found that there is

shortage of Rs.36,200/- and correction of records and F.I.R. was registered on 20.12.1985. It is pertinent to note that the F.I.R. was filed after 10 years of the alleged misappropriation and falsifying of accounts. Inspection was conducted on 13.9.1985 and after three months F.I.R. was registered. Actually appellant was only a clerk in the Society and he was appointed as Clerk in the Society on May 1983. He was directed to get Co-operative training for two years for becoming eligible for appointment as Secretary and he was deputed for training only on 3.7.1985. It is come out in evidence that even though he was not entitled to be appointed to the post of Secretary, he was acting as a Secretary as per Board minutes. Prosecution examined PWs.1 to 10 and Exts.P1 to P15 were marked. It is true that on going through the evidence, that were some corrections in the records, but there is no evidence to show that accused made the corrections. There is also no evidence to show that accused had misappropriated any amount. No allegations was also made to show that accused made corrections in the records. Even though the inspection was conducted and Co-operative department is conducting the

audit every year, audit reports were not produced. Even the inspection report submitted by PW6 was not produced and marked. The inspection report dated 13.9.1995 in which the President and PW6 the Co-operative Inspector who conducted an inspection would have been a more reliable and crucial document to prove the prosecution case. That document has been suppressed by the prosecution. To prove that the petitioner has falsified the records, there is no reliable evidence. The handwriting of the petitioner has not been identified by any person who is familiar with his handwriting. Neither the President nor any of the Director Board members or employees who worked with the petitioner were cited or examined as witnesses. There is no evidence to show that appellant has misappropriated the amounts and made corrections in the records. What is proved is that appellant was the Secretary in charge and the custodian of cash and records as per bye laws (bye laws not produced). Exts.P12 and P13 Daily account books contained his signature also. Being the Secretary in charge and since he is the custodian of the cash and registers also, even if he has not falsified the books, he has

civil liability to make shortage of any amount to the Society. Whether he was negligent so as to face action for misconduct as per service conditions is also a difficult aspect. In the absence of evidence of falsification of accounts and manipulation, he cannot be punished under Sections 408 and 477 (A) of the IPC. He may be absolutely liable to Society if there is any shortage of money due to his negligence during the period he was in charge as Secretary. But for that Society has to seek civil remedies like arbitration etc. But there is no evidence to find that the ingredients under Sections 477(A) or 408 of IPC are satisfied. Hence I set aside the conviction and sentence imposed on him and this revision petition is allowed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.R.P.29 OF 1997

O R D E R

29th October, 2007